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## I. INTRODUCTION

On August 9, 2004, the Attorney General filed a motion for clarification, or, in the alternative, reconsideration, of the Order. This motion should be rejected because it fails to satisfy the Department's standards for reconsideration or clarification. Moreover, the

request is nothing more than an attempt to circumvent the Department's rules against relitigation of issues that have been fully briefed and clearly resolved by the Department. The Department should dismiss this motion and affirm its long-standing precedent that precludes re-review of decided issues unless certain special situations pertain, none of which are present here.

## **II. STANDARD OF REVIEW**

The Attorney General generally has stated correctly the Department's relevant standard for granting reconsideration. Reconsideration of previously decided issues is granted only when extraordinary circumstances dictate a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. *Western Massachusetts Electric Company*, D.T.E. 97-120-A, pp. 1-2 (December 1, 1999) ; *North Attleboro Gas Company*, D.P.U. 94-130-B, p. 2 (1995); *Boston Edison Company*, D.P.U. 90-270-A, pp. 2-3 (1991); *Western Massachusetts Electric Company*, D.P.U. 558-A, p. 2 (1987). Importantly, a "motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered. It should not attempt to reargue issues considered and decided in the main case." *Western Massachusetts Electric Company*, D.T.E. 97-120-A, p. 2 (1999); *Commonwealth Electric Company*, D.P.U. 92-3C-1A, pp. 3-6 (1995). Reconsideration may be based on treatment that was the result of mistake or inadvertence. *Massachusetts Electric Company*, D.P.U. 90-261-B, p. 7 (1991).

A movant also faces a significant hurdle in requesting clarification. Clarification is only proper when "an order is silent as to the disposition of a specific issue requiring

determination in the order, or when the order contains language that is so ambiguous as to leave doubt as to its meaning. *Western Massachusetts Electric Company*, D.T.E. 97-120-A, p. 2 (1999); *Boston Edison Company*, D.P.U. 92-1A-B, p. 4 (1993); *Whitinsville Water Company*, D.P.U. 89-67-A, pp 1-2 (1989). Clarification does not involve reexamining the record for the purpose of substantially modifying a decision. *Boston Edison Company*, D.P.U. 90-335-A, p. 3 (1992), citing *Fitchburg Gas and Electric Light Company*, D.P.U. 18296/18297, p. 2 (1976).

### **III. THE ATTORNEY GENERAL UTTERLY FAILS TO MEET THE DEPARTMENTS STANDARDS FOR RECONSIDERATION OR CLARIFICATION.**

#### **A. Reconsideration**

The Attorney General's argument for reconsideration consists almost entirely of repeating, in abbreviated form, the same arguments that he made on brief and that were squarely rejected by the Department in the Order. A review of the Attorney General's arguments fully supports this point.

First, the Attorney General states that through the financing mechanism customers would lose \$6.0 million a year (\$3.6 million net) for a minimum of ten years and this is greater than the benefit to customers. Attorney General Motion, pp. 2-3.<sup>1</sup> This is the exact argument that the Attorney General made in his December 22, 2003 Initial Brief ("Initial Brief"). See Attorney General Brief, pp. 4, 5 (calculation of transition charge),

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<sup>1</sup> The only case cited by the Attorney General in making his argument is *Massachusetts Electric Company*, D.P.U. 90-261-B, p. 7 (1991), a case that undercuts the Attorney General's assertion. In D.P.U. 90-261-B, the Department of Public Utilities rejected Massachusetts Electric Company's motion for reconsideration because that company did not bring to light any previously unknown or undisclosed facts which would have a significant impact upon the decision already rendered.

6-7.<sup>2</sup> The Department recognized this argument by the Attorney General (Order, p. 12), but proceeded to reject it. The Department stated that (1) “the Company’s proposal would reduce overall costs” (Order, p. 14); (2) with respect to his specific cost calculation the Attorney General had made a “number of erroneous assumptions...” (Order, p. 16); (3) “the Attorney General’s cost estimates are not supported by the record evidence” (Order, p. 16); and (4) the Attorney General has not “provided any record evidence to support his claims” (Order, p. 16). Accordingly, the Attorney General’s argument has been fully considered and rejected by the Department. The Attorney General has not produced any extraordinary circumstances to warrant reconsideration, nor, in fact, has the Attorney General even argued that such extraordinary circumstances exist.

Second, the Attorney General in his motion raises again the discredited notion that the Department’s decision should be based on the expected operating life of Millstone Nuclear Unit 3. Attorney General Motion, p. 3. This is a repeat of his argument on brief (Initial Brief, p. 5). The Department considered the Attorney General’s position in its decision and also rejected it, stating that “there is no evidence that the operational status of Millstone 3 is relevant to the date DOE will demand payment of the PSNF debt” (Order, p. 16). Accordingly, the Attorney General’s argument has been fully considered and rejected by the Department. The Attorney General has simply rehashed a prior argument; such a rehash does not serve as a basis for reconsideration.

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<sup>2</sup> Although the argument stays the same, the Attorney General contradicts himself on his interpretation of the increased costs of the financing. He comes up with a \$5.48 million cost in the Initial Brief but a \$6.0 million cost in his motion. Neither of the figures are supported by the record.

Third, the Attorney General claims that the Department failed to make required findings under G.L. c. 164, § 17A, that “there would be benefits arising from the financing (for any years of the prior [sic] to 2026)”. The Attorney General does not specify the language in Section 17A requiring specific findings. Apparently, this is the same argument that was made on brief in which the Attorney General asserted that the Department must determine that under Section 17A the proposal is “consistent with the public interest.” Attorney General Brief, p. 3. The Department, however, fully examined the requirements of Section 17A in its order and determined that approval under Section 17A is not required for this financing request. The Department, however, went further and determined that even if Section 17A did apply WMECO had satisfied its requirements. Order, p. 21. Accordingly, the Attorney General’s assertion has been fully considered by the Department and there is nothing in his motion that would warrant reconsideration.

In sum, the Attorney General’s motion for reconsideration stands solely on the Attorney General’s opinion that the Department wrongly decided WMECO’s financing request. The Attorney General is entitled to his own opinion on this matter but such an opinion is not a proper basis for reconsideration before the Department.

#### **B. Clarification**

The Attorney General requests clarification of the Order along with reconsideration. However, the Attorney General fails to identify an issue on which the “order is silent...that requires determination, or...language that is so ambiguous as to leave doubt as to its meaning.” The Attorney General may not like the Department’s decision but it is a careful, thorough examination of the Company’s proposal with very

clear findings. Accordingly, pursuant to long-standing Department precedent, there is no basis for clarification.

#### **IV. CONCLUSION**

**WHEREFORE**, Western Massachusetts Electric Company requests that the Department:

**Reject** in an expeditious fashion the Attorney General's motion for reconsideration and/or clarification.

Respectfully submitted,

By its attorney,

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Stephen Klionsky  
100 Summer St., 23<sup>rd</sup> Floor  
Boston, MA 02110  
Tel. 617/345-1066

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